

TENTATIVE RULINGS for CIVIL LAW and MOTION September 10, 2012

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6722

TENTATIVE RULING

Case: **Monday v. GWP Holdings, LLC**
Case No. CV CV 12-726

Hearing Date: **September 10, 2012 Department Fifteen 8:30 a.m.**

In defendant GWP Holdings, LLC's motion to compel arbitration, defendant asserts that paragraph 2.2 of the Confidentiality and Dispute Resolution Agreement requires that an arbitrator, not this Court, determine whether the arbitration provision therein is unconscionable under *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83. It appears that there is a split between the courts of appeal on this issue, which the parties have not adequately addressed and analyzed in their briefs. (See e.g., *Chin v. Advanced Fresh Concepts Franchise Corp.* (2011) 194 Cal.App.4th 704; *Parada v. Superior Court* (2009) 176 Cal.App.4th 1554; *Bruno v. Didion* (2008) 160 Cal.App.4th 1272; *Dream Theater v. Dream Theater* (2004) 124 Cal.App.4th 547.)

This matter is continued to October 5, 2012, in Department 15 at 8:30 a.m., so the parties can provide further briefing on the issue of whether the defense of unconscionability asserted by plaintiff for invalidity of the arbitration provision must be decided by an arbitrator. The issue is whether, on the record before the Court, there is "clear and unmistakable" evidence that the parties intended to delegate the issue to the arbitrator. (*Rent-A-Center, W., Inc. v. Jackson* (2010) 130 S. Ct. 2772.) The parties shall file briefs reviewing and analyzing this issue by no later than September 28, 2012.